

EXHIBIT "C"

PERMISSION TO COPY DENIED, HRS 606.13, etc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) Criminal No.
ROBERT F. ABAD,) 02-309
Defendant.)

PARTIAL TRANSCRIPT OF TRIAL

Trial held on Wednesday, October 16, 2002,
in Courtroom 5, U.S. Courthouse, Honolulu,
Hawaii.

B E F O R E :

THE HON. KEVIN S. C. CHANG
Magistrate Judge

POWERS & ASSOCIATES
(808) 536-2001

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APPEARANCES:

For Plaintiff:

JUSTIN B. CLANCY, ESQ.
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U.S. Attorney's Office
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300 Ala Moana Boulevard
Honolulu, Hawaii 96813
(541-2850)

For Defendant:

BIRNEY B. BERVAR, ESQ.
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(550-4990)

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(808) 536-2001

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1 V E R D I C T

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3 THE COURT: In this case Defendant
4 Robert Abad is charged in information filed
5 on July 15th, 2002, with the offense of
6 terroristic threatening in the second degree
7 in violation of Hawaii Revised Statutes,
8 Section 707-17, and Title 18, United States
9 Code Section 13.

10 After considering all of the evi-
11 dence and weighing the credibility of the
12 witnesses, the Court finds that the United
13 States has failed to establish the central
14 elements of the offense charged beyond a
15 reasonable doubt.

16 Specifically, the United States has
17 failed to prove beyond a reasonable doubt
18 that on October 10th, 2001, at Naval Maga-
19 zine, Lualualei, in the District of Hawaii,
20 the Defendant threatened by word or conduct
21 to cause bodily injury to Milton Kaopua with
22 the intent to terrorize or in reckless disre-
23 gard of the risk of terrorizing Milton
24 Kaopua.

25 The Defendant said, "I think I'm

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1 just going to have to shoot him," referring
2 to Milton Kaopua. This statement or threat
3 was directed Kaopua. However, the circum-
4 stances surrounding the threat rendered the
5 threat -- the circumstances surrounding the
6 threat were not so unambiguous, uncondition-
7 al, immediate and specific as to convey a
8 gravity of purpose and imminent prospect of
9 execution. In fact, Officer Hallberg testi-
10 fied that he waited three days to advise
11 Kaopua of an unspecified threat. Details of
12 the threat were not revealed to Kaopua until
13 October 23rd.

14 Considering the totality of these
15 circumstances, the Defendant's statement or
16 threat was not a true threat within the defi-
17 nition referred to in State vs. Chung, 75
18 Hawaii 398, 862 Pacific 2nd, 1063, a 1993
19 case.

20 It does appear to the Court that the
21 statement was made out of frustration or
22 transitory anger arising out of damage to a
23 locker access to an icemaker. It also ap-
24 pears to the Court, Mr. Abad, that the threat
25 or the statement was a violation of a

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1 workplace violence policy, which is set out
2 in government's Exhibit 1.

3 It was, frankly, a stupid and irre-
4 sponsible statement to make, but, as stated
5 previously, the government has failed to
6 sustain its burden of proof in this case, and
7 therefore, based on the foregoing, the Court
8 finds and adjudges the Defendant, Robert
9 Abad, not guilty of the offense charged in
10 the information filed on July 15, 2002.

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TRANSCRIBER'S CERTIFICATE

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3 I, Merrill Zundell, hereby certify
4 that the foregoing is a true, full and cor-
5 rect transcript of the verdict portion of the
6 above-captioned proceeding, as transcribed by
7 me into typewriting to the best of my ability
8 from electronic sound recording.

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Merrill Zundell